SUPREME COURT, U. S.
DEC 5 1973
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-876

JESUS CONTRERAS, et al., *Petitioners,*

vs.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI
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for the Ninth Circuit

Petitioners Jesus Contreras, Luis Herrera, Guadalupe Montana, and Fidel Valdez respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled proceeding on September 7, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in Appendix A hereto, *infra* at pp.

i-iv. The unreported opinion of the United States District Court for the Northern District of California appears in Appendix B hereto, *infra* at pp. v-viii.

JURISDICTION

The judgment of the Court of Appeals was entered on September 7, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether an employee may bring a suit for treble damages, under Section 4 of the Clayton Act (15 U.S.C. §15), where he has suffered loss of employment opportunities as a direct result of his employer's participation in an agreement with other producers to raise the price of a commodity, in violation of the antitrust laws, by restricting its production and sale.

STATUTES INVOLVED

Section 4 of the Clayton Anti-Trust Act (15 U.S.C. §15) provides as follows:

> §15. Suits by persons injured; amount of recovery
>
> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in

> which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

The relevant provisions of the Sherman Anti-Trust Act (15 U.S.C. §§1-7) are set forth in Appendix C hereto, *infra* at pp. ix-x.

STATEMENT OF THE CASE

On September 3, 1970, petitioners filed a complaint for treble damages and injunctive relief, under the Sherman and Clayton Anti-Trust Acts (15 U.S.C. §§1-7 and 12-27), in the United States District Court for the Northern District of California. (R. 1-6).[1] The complaint alleged that petitioners were individuals who resided in the Northern District of California and were "employed regularly as farm workers engaged in the growing, harvesting, and/or processing of iceberg lettuce." (R. 2). Respondents were alleged to be growers and shippers of agricultural commodities, doing business in the Northern District of California, who "grow and/or ship in excess of 90 per cent of all the iceberg lettuce produced and sold in the United States." (R. 2-3).[2]

Plaintiffs further alleged in their complaint that on or about January 1, 1965, the respondent growers

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[1]"R." references are to the Record on Appeal which is on file in the Court of Appeals below.

[2]The full names and capacities of the 39 respondents are set forth *infra* at pp. i-ii.

and shippers had violated Sections 1 and 2 of the Sherman Act by entering into a "continuing contract, combination and conspiracy to restrain interstate trade and commerce in iceberg lettuce by illegally fixing the price thereof at an artificially high and noncompetitive price." (R. 3-4). More specifically, the complaint alleged that "[respondents], and each of them, [had] agreed among themselves and with their other co-conspirators to limit the total amount of iceberg lettuce produced and sold by them each year, each individual conspirator to be limited to a pro-rata share of the total based upon his average production for the preceding five years." (R. 4). In furtherance of such agreement, respondents were alleged to have "reduced their production, harvesting, and sale of iceberg lettuce to a level below that which would otherwise prevail [and] thereby reduced both the hours per day and days per year worked by their agricultural employees engaged in the growing, harvesting or processing of such lettuce." (R. 4). The complaint alleged that as a direct and proximate result of respondents' acts, "the total amount of iceberg lettuce moving in interstate commerce [had] been reduced, and the price of such lettuce [had] thereby been raised to and maintained at an artificially high and noncompetitive level." (R. 4).

The petitioners, who had brought suit on behalf of a class consisting of all lettuce workers employed by respondents on or after the date of the above-described agreement (R. 3), alleged that "as a direct and proximate result of the aforesaid violations of the

antitrust laws, the work available to the farm workers employed in the growing, harvesting and processing of iceberg lettuce [had] been substantially reduced." (R. 5). They further alleged that in such circumstances, they had been injured in their "business or property" within the meaning of Section 4 of the Clayton Act, set forth *supra,* and thus had standing to challenge respondents' antitrust violations in a civil suit for treble damages. (R. 5).

On February 11, 1971, respondents filed their joint motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure. (R. 36-39). Said motion was made on the ground that petitioners had no standing to complain of the *per se* antitrust violations alleged in their complaint because the loss of employment opportunities flowing from such violations was not injury to their "business or property" within the meaning of Section 4 of the Clayton Act. (R. 36). On April 8, 1971, United States District Judge Alfonso J. Zirpoli issued his written order and decision treating respondents' motion for summary judgment as a motion to dismiss pursuant to Rule 12, Federal Rules of Civil Procedure, and on that basis granting the motion and directing that petitioners' complaint be dismissed. (Appendix B, *infra,* at pp. v-viii). Judge Zirpoli concluded as follows *(infra,* p. vii):

> Here, by plaintiffs' own allegations, the purpose of the conspiracy was to raise the price of iceberg lettuce. This was allegedly to be accomplished by reducing production and dividing total production between growers. The injury to plain-

> tiffs was not necessary to achieve the purposes of the conspiracy, even though it may have followed as a logical result of the other acts. For this reason, plaintiffs lack the requisite standing to sue, and defendants' motion to dismiss must be granted.

On April 20, 1971, plaintiffs filed timely notice of appeal from the foregoing judgment of dismissal. (R. 265). On September 7, 1973, the United States Court of Appeals for the Ninth Circuit affirmed Judge Zirpoli's decision. (Appendix A, *infra* at pp. i-iv). It held as follows *(infra,* pp. iii-iv):

> In determining that the appellants did not have standing to bring this action under Sec. 4 of the Clayton Act, the district court relied on the following decisions: *Conference of Studio Unions v. Loew's,* 193 F.2d 51, 54-55 (9th Cir. 1951), cert. denied 342 U.S. 919 (1952); *Hoopes v. Union Oil Company,* 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), cert. denied 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).
>
> We are in complete agreement with the district court that these cases clearly indicate that the appellants do not come within the 'target area' as that term is defined in this Circuit for determining the question of standing to sue under Section 4 of the Clayton Act. See also *In Re Multidistrict Vehicle Air Pollution M.D.L. No. 31,* ..... F.2d ..... No. 71-1241 (9th Cir. June 4, 1973).

REASONS FOR GRANTING THE WRIT

1. Petitioners alleged in their complaint that they had been injured, through loss of employment opportunities, as a direct result of production limitations imposed by their employers pursuant to an agreement to reduce the supply, and thus raise the price, of a commodity moving in interstate commerce. Never at any stage of the proceedings below was it disputed that such an agreement is a *per se* violation of the antitrust laws. See *Standard Oil Co. of New Jersey v. United States,* 221 U.S. 1 (1910). The sole question before the District Court and the Court of Appeals was whether petitioners had been "injured in [their] business or property by reason of" the agreement within the meaning of Section 4 of the Clayton Act (15 U.S.C. §15).

The Court of Appeals, affirming the District Court, concluded that they had not. In so holding, it relied upon the "target area" concept of antitrust standing first referred to in *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir., 1955), and subsequently adopted in various forms by a number of the other circuits. See, e.g., *Calderone Enterprises Corp. v. United Artists' Theatre Circuit, Inc.,* 454 F.2d 1292 (2d Cir., 1971), cert. denied, 406 U.S. 930 (1972). Citing a number of its own previous decisions, the Court of Appeals adopted the reasoning of the District Court, which had held that petitioners were not in the "target area" contemplated by Section 4 of the Clayton Act because the injury they suffered "was not necessary to achieve the purposes of the conspiracy, even

though it may have followed as a logical result of [respondents'] other acts." (*supra,* p. 6).

Petitioners submit that the decision below is in direct conflict with those of at least three other circuits, all of whom have reached a contrary conclusion on substantially similar facts. Thus, in *Roseland v. Phister Mfg. Co.,* 125 F.2d 417 (7th Cir., 1942), the three defendants were the sole manufacturers of certain fire prevention equipment. The plaintiff was a salesman employed by one of the three. He alleged that the defendants had entered into a conspiracy to eliminate competition among themselves in the sale of their products by allocating geographical markets, dividing customers, and establishing fixed prices. He further alleged that as a "necessary result" of the agreement, he had been "deprived of the opportunity to bid in certain territories where he was exclusive representative of [his employer] . . . and deprived of the opportunity of making sales . . ." (125 F.2d at 419). The Seventh Circuit, concluding that in such circumstances the plaintiff had been injured in his "business or property by reason of" the defendants' unlawful scheme, allowed recovery. (125 F.2d at 419-420).

Similarly, in *Vines v. General Outdoor Advertising Co.,* 171 F.2d 487 (2d Cir. 1948), the plaintiff was an advertising salesman who alleged that his employer, by transferring one of his accounts to a competitor pursuant to an unlawful agreement similar to that in *Roseland v. Phister Mfg. Co., supra,* had injured him in his "business or property" within the meaning of

Section 4 of the Clayton Act. The Second Circuit, vacating a summary judgment against the plaintiff, held that it could not deny him an opportunity "to prove that the defendant employer would have allowed him to continue to be the solicitor of the Liebmann Breweries, if it had not transferred the account to Outdoor Advertising Co., Inc.; or to prove that that transfer was in pursuance of an unlawful agreement between the two companies." (171 F.2d at 491).

And finally, in *Dailey v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir., 1967), the Fifth Circuit permitted recovery for loss of employment opportunities suffered by an employee as a result of antitrust violations participated in by his employer. The plaintiff in that case, like the plaintiffs in *Roseland* and *Vines, supra,* was a commission salesman (380 F.2d at 485).[3] He alleged that as a direct result of the acquisition of his former employer by another firm, pursuant to a sale agreement which violated both the Sherman and Clayton Acts, he had suffered first a reduction in the size of his territory and then a termination of his employment. *(Id.* at 486). He brought suit, under Section 4 of the Clayton Act, against all parties to the agreement.

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[3]The instant case may not, however, be distinguished from *Roseland, Vines,* and *Dailey* on the ground that the employment of a rank-and-file worker is not "business or property" within the meaning of the statute. This Court has in fact held to the contrary on at least two occasions. See *Anderson v. Shipowners Assn. of the Pacific Coast,* 272 U.S. 359 (1926); and *Radovich v. National Football League,* 352 U.S. 451 (1957). See also *Nichols v. Spencer Intl. Press, Inc.,* 371 F.2d 332, 334 (7th Cir., 1967); and *Intl. Assn. of Heat and Frost Insulators and Asbestos Workers v. United Contractors Assn.,* 483 F.2d 384, 394 (3rd Cir., 1973).

The Fifth Circuit, reversing a district court dismissal of his complaint, on the ground that he lacked standing to sue, concluded that ". . . the injury to Dailey was direct and not a mere incidental result of the acquisition." *(Id.* at 486-487). In reaching this conclusion, it adopted a view of the "target area" requirement which had been taken by the Fourth Circuit in *South Carolina Council of Milk Producers, Inc. v. Newton,* 360 F.2d 414 (4th Cir., 1966). There, the court held that:

> The pivot of decision presently is whether the defendant's asserted conduct was the proximate cause of the plaintiffs' asserted injury. If the damage was merely incidental or consequential, or if the defendant's antitrust acts are so removed from the injury as to be only remotely causative, the plaintiffs have not been injured 'by reason of anything forbidden by the antitrust laws' as contemplated by the Clayton Act.

(360 F.2d at 419-420). Applying that test to the allegations of the complaint in *Dailey v. Quality School Plan, Inc.,* the Fifth Circuit concluded that the plaintiff in that case had established the existence of proximate cause sufficient to give him standing to sue. *(Id.* at 487-488).

The foregoing decisions cannot be reconciled with the one below. In each case, the defendant employers were party to an unlawful agreement aimed at enhancing the price of their product by eliminating competition among sellers in the product market. Implementation of the agreement required in each case that the defendant employers either cut back their

overall sales or forego selling in certain markets altogether. And the plaintiff employees in each case suffered loss of employment opportunities as a direct result of the reduction in sales.

Under the reasoning adopted by the Court of Appeals below, the plaintiffs in each of the cases cited above would have been denied recovery because their injury "was not necessary to achieve the purposes of the conspiracy, even though it may have followed as a logical result of [the conspirators'] other acts." *(supra,* pp. 5-6). The other circuits, however, have rejected such reasoning. Relying upon the direct and proximate causal relationship between the antitrust violation of the employer and the injury to his employee, they allowed standing to sue under Section 4 of the Clayton Act in circumstances where the Court of Appeals below would clearly have denied it. This Court can and should resolve the resulting conflict of decision.

2. The decision of the Court of Appeals in the instant case is not only inconsistent with the decisions of at least three other circuits, but contrary to the national antitrust policies articulated in prior opinions of this Court. Thus, in *Zenith Radio Corp. v. Hazeltine Research Inc.,* 395 U.S. 100 (1969), the Court noted that ". . . the purpose of giving private parties treble-damage and injunctive remedies was not merely to provide private relief, but was to serve as well the high purpose of enforcing the antitrust laws." (395 U.S. at 130-131). Similarly, in *Fortner Enterprises, Inc. v. United States Steel Corp.,* 394 U.S. 495 (1969),

the Court recognized that ". . . Congress has encouraged private antitrust litigation not merely to compensate those who have been directly injured but also to vindicate the important public interest in free competition." (394 U.S. at 502). See also *Hawaii v. Standard Oil Co. of California,* 405 U.S. 251, 262 (1972); and *Perma Life Mufflers, Inc. v. International Parts Corp.,* 392 U.S. 134, 139 (1968).

In accordance with this strong congressional policy in favor of private antitrust litigation, the Court has extended standing under Section 4 of the Clayton Act to a wide range of persons seeking relief from violations of the antitrust laws. "The Statute does not confine its protection to consumers, or to purchasers, or to sellers . . . the Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated." *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.,* 334 U.S. 219, 236 (1948). It has also cautioned against overly restrictive interpretations of the statute which would devitalize it as a vehicle for protection of the public interest. In *Radovich v. National Football League,* 352 U.S. 445 (1957), the Court granted standing to sue under Section 4 of the Clayton Act to a professional football player who alleged that he had been denied employment as the result of a "black-listing" agreement which was "the result of a conspiracy among the [defendants] to monopolize commerce in professional football among the States . . . in violation of §§1 and 2 of the Sherman Act." (352 U.S. at 448-449). It reasoned as follows:

> Petitioners claim need only be 'tested under the Sherman Act's general prohibition on unreasonable restraints of trade,' [citation omitted], and meet the requirement that petitioner has thereby suffered injury. Congress has, by legislative fiat, determined that such prohibited activities are injurious to the public and has provided sanctions allowing private enforcement of the antitrust laws by an aggrieved party. These laws protect the victims of the forbidden practices as well as the public [citation omitted]. Furthermore, Congress itself has placed the private antitrust litigant in a most favorable position through the enactment of § 5 of the Clayton Act. [citation omitted]. *In the face of such a policy this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws.*

(352 U.S. at 453-454, emphasis added). See also *Radiant Burners, Inc. v. Peoples Gas Light and Coke Co.*, 364 U.S. 656, 660 (1961).

The decision of the Court of Appeals in the instant case is directly contrary to the liberal interpretation of Section 4 of the Clayton Act mandated by this Court in *Radovich v. National Football League* and the other cases cited *supra*. In short, the petitioners have alleged both an antitrust violation by respondents and an injury to their own business or property by reason of that violation. Nothing more is required by the statute, and additional obstacles to standing should not be created by the courts. As the Court held in *Radiant Burners, Inc. v. Peoples Gas Light and Coke Co., supra,* "to state a claim upon which relief

can be granted . . . allegations adequate to show a violation and, in a private treble damage action, that plaintiff was damaged thereby are all the law requires." (364 U.S. at 660).

Nor did the allegations here fail to establish "the necessary causal connection between respondents' antitrust violations and petitioners' injury." *Continental Ore Co. v. Union Carbide and Carbon Corp.*, 370 U.S. 690, 700 (1962). While it is true that not all injuries which might conceivably be traced to a violation of the antitrust laws are compensable in a suit for treble damages *(Hawaii v. Standard Oil Co. of California, supra)*, recovery may be denied only where the injury asserted is so remote as to indicate an absence of proximate cause. *Zenith Radio Corp. v. Hazeltine Research, Inc., supra,* 395 U.S. at 114, n. 9 ("It is enough that the illegality is shown to be a material cause of the injury . . ."). See also *Perma Life Mufflers, Inc. v. International Parts Corp., supra,* 392 U.S. at 143-144 (concurring opinion).

The injuries sustained by petitioners in the instant case were in no sense "remote" *(Continental Ore Co. v. Union Carbide and Carbon Corp., supra,* 370 U.S. at 700). They arose from petitioners' employment relationship with respondents and were a direct, immediate and foreseeable result of the implementation of respondents' unlawful agreement to limit their production of iceberg lettuce. See *Hoopes v. Union Oil Co. of California,* 374 F.2d 480, 485 (9th Cir., 1967) (cited by this Court in *Hawaii v. Standard Oil Co. of California, supra).* Nor were such injuries in any

sense "derivative." (See *Congress Bldg. Corp. v. Loew's Inc.*, 246 F.2d 587, 590-591 (7th Cir., 1957).) They were unique to the petitioners and in no way the incidental result of an injury to some other victim of respondents' conspiracy. Compare *Billy Baxter, Inc. v. Coca-Cola Co.*, 431 F.2d 183 (2d Cir., 1970), cert. denied, 401 U.S. 923 (1971) (also cited in *Hawaii v. Standard Oil Co. of California, supra).*

Petitioners have thus established a clear and direct causal relationship between their own injuries and the unlawful conduct of the respondents. In dismissing their complaint for treble damages, on the ground that such injuries were not "necessary to achieve the purposes of the conspiracy" *(supra,* p. 6), the courts below imposed an additional requirement for standing which finds no support in the language of Section 4 of the Clayton Act. Their view of the statute would require not only an allegation of proximate cause, but a further allegation that the respondents, in conspiring to fix the price of their product, had a specific intent to injure the petitioners. We submit that such an interpretation is totally at odds with the many decisions of this Court holding that the absence of such intent is irrelevant in the case of a *per se* violation. *U.S. v. Columbia Steel Co.*, 334 U.S. 495, 522-523 (1948); *U.S. v. General Motors Corp.*, 384 U.S. 127, 146 (1966); *U.S. v. United States Gypsum Co.*, 340 U.S. 76, 86-87 (1950). It is, moreover, contrary to the many other decisions cited above which hold that the courts should not discourage private antitrust enforcement by creating "requirements to bur-

den the private litigant beyond what is specifically set forth . . ." *Radovich v. National Football League, supra.* This Court should accordingly grant certiorari to correct the erroneous decision of the Court of Appeals below.

3. While the decision below is in direct conflict with several established principles of antitrust law (*supra,* pp. 11-16), the specific question presented by the instant case—whether an employee can recover treble damages for lost employment opportunities sustained by reason of his employer's participation in an anticompetitive marketing arrangement—has not yet been decided by this Court. The facts of *Roseland v. Phister Mfg. Co., Vines v. General Outdoor Advertising Co.,* and *Dailey v. Quality School Plan, Inc.,* all cited *supra,* demonstrate that this question is an important and recurring one. In almost every case, the implementation of such an arrangement will directly affect the economic interests of persons employed by the conspirators. See also *Wilson v. Ringsby Truck Lines, Inc.,* 320 F.Supp. 699 (D.C. Colo., 1970). The question of such persons' standing to challenge the unlawful arrangement should be decided by the Court in the instant proceeding.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

JAMES VANCE HENRY,
Counsel for Petitioners.

WILLIAM H. CARDER,
JEROME COHEN,
Of Counsel.

December 4, 1973.

(Appendices Follow)

Appendix A

United States Court of Appeals for the Ninth Circuit

Jesus Contreras, Luis Herrera, Guadalupe Montana, and Fidel Valdez, individually and as representatives of a class consisting of all those similarly situated,

Plaintiffs-Appellants,

vs.

Grower Shipper Vegetable Association of Central California, an unincorporated association; Herbert Fleming, individually and as President of said association; Admiral Packing Company, a California corporation; Arrow Lettuce Co., a California corporation; B & L Produce, Inc., a California corporation; California Coastal Farms, Inc., a California corporation; Bruce Church, Inc., a California corporation; Thomas McNamara, individually and as President of Bruce Church, Inc.; Consolidated Growers, Inc., a California corporation; J. J. Crosetti Co., a California corporation; J. J. Crosetti, individually and as President of J. J. Crosetti Co.; D'Arrigo Bros. of California, a California corporation; Andrew D'Arrigo, individually and as President of D'Arrigo Bros. of California; Eckel Produce Co., a partnership; Robert Englund, individually and doing business as R. T. Englund Company; Freshpict Foods, Inc., a California corporation; Howard Leach, individually and as President of Freshpict Foods, Inc.; The Garin Company, Inc., a California corporation; Green Valley Produce Co-Op, an agricultural marketing association; Robert A. Smith, individually and as General Manager of said association; Harden Farms of California, a California corporation; Hitchcock Packing Co., Inc., a California corporation; Carl Joseph Maggio, Inc., a California corporation; Major Farms, Inc., a California corporation; Merit Packing Company, a California corporation; Merrill Farms, a California corporation; Oshita, Inc., a California corporation; Jack Oshita, individually and as President of Oshita, Inc.; Pacific Fruit & Produce Co., a California corporation; Pacific Lettuce Co., a California corporation; Sakata Ranches, Inc., a California

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corporation; Salinas Lettuce Farmers Co-Op, an agricultural marketing association; Salinas Marketing Cooperative, an agricultural marketing cooperative; Denny Bertelsman, individually and as General Manager of Salinas Marketing Cooperative; Ralph Samsel, individually and doing business as Ralph Samsel Co.; Schuman Farms, a California corporation; Sears Bros. & Co., a California corporation; West Coast Farms, a limited partnership; Bud Antle, Inc., a California corporation; Robert V. Antle, individually and as Vice-President of Bud Antle, Inc., and Does 1 through 200, inclusive,

Defendants-Appellees.

[September 7, 1973]

Appeal from the United States District Court for the Northern District of California

---

Before: CHAMBERS and TRASK, Circuit Judges and TAYLOR, District Judge*.

PER CURIAM:

The plaintiffs-appellants, Jesus Contreras, et al., are appealing from an order entered on April 8, 1971, by the district court granting the motion of defendants-appellees, Grower Shipper Vegetable Association of Central California, et al., to dismiss appellants' complaint. The motion was granted on the ground that appellants lacked the requisite standing to sue under Section 4 of the Clayton Act, Title 15 U.S.C. §15.

The appellants are agricultural employees engaged as field workers in the growing, harvesting and pro-

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*Of the District of Idaho, sitting by designation.

cessing of iceberg lettuce. They allege that the appellees contracted, combined and conspired in interstate trade and commerce to fix prices for iceberg lettuce at an artificially high and noncompetitive price by limiting the total amount of iceberg lettuce produced and sold by them each year. Appellants claim they were injured in their business or property in that the work available to them was reduced by appellees' action in limiting the amount of lettuce production.

The appellees claim that the appeal was premature in that it was not taken from a final order since it dismissed the complaint and not the cause of action. In light of the decision in *Firchau v. Diamond National Corp.,* 345 F.2d 269 (1965), we believe, in the circumstances of this case, the appeal was not premature.

In determining that the appellants did not have standing to bring this action under Sec. 4 of the Clayton Act, the district court relied on the following decisions: *Conference of Studio Unions v. Loew's, Inc.,* 193 F.2d 51, 54-55 (9th Cir. 1951), cert. denied 342 U.S. 919 (1952); *Hoopes v. Union Oil Company,* 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), cert. denied 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).

We are in complete agreement with the district court that these cases clearly indicate that the appellants do not come within the "target area" as that term is defined in this Circuit for determining the question of standing to sue under Section 4 of the

Clayton Act. See also *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31,* ..... F.2d ..... No. 71-1241 (9th Cir. June 4, 1973).

Accordingly, we AFFIRM.

Appendix B

United States District Court
for the Northern District of California

No. C-70 1891 AJZ

Jesus Contreras, et al.,
Plaintiffs,

vs.

Grower Shipper Vegetable Association of Central California, an unincorporated association, et al.,
Defendants.

Bud Antle, Inc., a corporation, on behalf of itself and of a class consisting of all those similarly situated,
Counterclaimant,

vs.

Jesus Contreras, et al.,
Counterdefendants and Additional Parties Defendant.

[Filed April 8, 1971]

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This is an antitrust action brought under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and § 4 of the Clayton Act (15 U.S.C. § 15), alleging in substance that defendants, growers and shippers of iceberg

lettuce and their "trade association," entered into a contract, combination or conspiracy to restrain interstate trade in iceberg lettuce and thereby raise the price of iceberg lettuce through acts consisting of limiting the total amount of iceberg lettuce produced and dividing the market for such lettuce between them. Plaintiffs bring this action on their own behalf and as representatives of all farm workers who are now or have, since September 15, 1966, been employed by defendants as farm workers engaged in growing, harvesting and/or processing of iceberg lettuce. They allege that they have been "injured in their business or property" by acts of the defendants in that they have lost certain opportunities to work by reason of the defendants' limitation of their lettuce production. Defendants have, in this proceeding, filed a motion for summary judgment which the Court and the parties treated as a motion to dismiss the complaint on the grounds that plaintiffs lack the requisite standing to sue. After hearing argument and considering the briefs of all parties, the Court concludes that defendants' motion to dismiss should be granted.

The law in this Circuit on this subject is clear. In order to maintain an action of this nature, plaintiffs must be "within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry" *Conference of Studio Unions v. Loew's, Inc.,* 193 F. 2d 51, 54-55 (9th Cir. 1951), *cert. denied* 342 U.S. 919 (1952); *accord Hoopes v. Union Oil Company,* 374 F.2d 480 (9th

Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), *cert. denied* 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).

A review of these cases indicates that there is standing only when the injury to the plaintiff is a necessary consequence of an act, intended to further the economic concentration sought by defendants, which *must* occur to achieve that end. Thus, vitality of the decision by the Ninth Circuit is in no way impaired by *Radovich v. National Football League,* 352 U.S. 451 (1957), where the injury to the "blacklisted" football player had to occur so as to "pursuade" players not to sign with football teams from the rival league, thereby forcing that league out of existence.

Here, by plaintiffs' own allegations, the purpose of the conspiracy was to raise the price of iceberg lettuce. This was allegedly to be accomplished by reducing production and dividing total production between growers. The injury to plaintiffs was not necessary to achieve the purposes of the conspiracy, even though it may have followed as a logical result of the other acts. For this reason, plaintiffs lack the requisite standing to sue, and defendants' motion to dismiss must be granted.

In reaching this conclusion, the Court takes no cognizance of defendants' argument that the real dispute is a labor dispute and that this action is merely one of many different actions brought to harass defendants. Not only is there a total lack of real evidence to support this contention, even were it true,

plaintiffs would not be estopped from raising anti-trust issues if they were otherwise in a position to do so.

For the reasons stated above, IT IS ORDERED that defendants' motion to dismiss the complaint is granted and the complaint is dismissed, each party to bear its own costs.

Dated: April 8, 1971.

Alfonso J. Zirpoli
United States District Judge

Appendix C

The relevant provisions of the Sherman Anti-Trust Act (15 U.S.C. §§ 1-7) are as follows:

§1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenace of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between

persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-876

JESUS CONTRERAS, LOUIS HERRERA, GUADALUPE MONTANA, and FIDEL VALDEZ, individually and as representatives of a class consisting of all those similarly situated,

Plaintiffs and Petitioners,

vs.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, an unincorporated association, et al.,

Defendants and Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief in Opposition for Defendants and Respondents Bud Antle, Inc. and Robert V. Antle

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In the Supreme Court of the United States

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Plaintiffs and Petitioners,

v.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, an unincorporated association, et al.,

Defendants and Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief in Opposition for Defendants and Respondents Bud Antle, Inc. and Robert V. Antle

Defendants and respondents BUD ANTLE, INC. and ROBERT V. ANTLE herewith respond to the petition for writ of certiorari heretofore filed with this Court and respectfully pray that the application for writ of certiorari be denied.

QUESTION PRESENTED

The question presented by the petition is whether all the agricultural employees employed since 1966 in the growing, harvesting and packing of iceberg lettuce have standing under the anti-trust laws of the United States to sue certain growers, shippers, and packers of iceberg lettuce for damages because of work claimed to have been lost when the respondents allegedly engaged in a conspiracy to fix prices for iceberg lettuce by, among other means, limiting production of lettuce.

STATEMENT OF CASE

On April 8, 1971, the Honorable Alfonso J. Zirpoli of the United States District Court for the Northern District of California granted respondents' motion to dismiss petitioners' complaint. The motion was granted for the reason that the petitioners were not within the "target area" of the alleged price fixing conspiracy and therefore lacked the requisite standing to sue for damages under Section 4 of the Clayton Act (15 U.S.C. § 15). (R. 264)[1] On appeal by petitioners to the Court of Appeals for the Ninth Circuit, the Court of Appeals affirmed the judgment and order of the trial court. Copies of the opinions of the Court of Appeals and of the District Court are attached to the petition as Appendix A and Appendix B, respectively.

By way of petitioners' complaint, petitioners claim to be agricultural employees engaged in the growing, harvesting and processing of iceberg lettuce. (R. 2, lines 21-4.) *Petitioners do not allege that they were at any time employees of any of the respondents.* Petitioners purport to bring the action, however, on behalf of *all farmworkers* who since

1. "R" references are to page numbers assigned to the record on appeal on file in the Court of Appeals below.

September 15, 1966 have been employed by respondents as farmworkers engaged in the growing, harvesting and/or processing of iceberg lettuce. (R. 3, lines 11-20.) The named respondents are alleged to grow and/or ship in excess of ninety percent (90%) of all the iceberg lettuce produced and sold in the United States. (R. 3, lines 4-5.)

On information and belief, petitioners allege that respondents and "other growers, processers and/or shippers of iceberg lettuce" *have contracted, combined and conspired in interstate trade and commerce to fix prices for iceberg lettuce at an artificially high and non-competitive price.* (R. 3, lines 29-4, line 9.) As a part of such conspiracy, petitioners further allege, again on information and belief, that respondents conspired to limit the total amount of iceberg lettuce produced and sold by them each year. (R. 4, lines 14-26.) The total amount of iceberg lettuce moving in interstate commerce was allegedly reduced, and the price of lettuce was allegedly raised to an artificially high level. (R. 4, lines 27-31.) *Yet, petitioners do not claim that as a part of such conspiracy the respondents agreed or conspired to discharge employees, to limit employment, to limit or to restrict hours worked, or to limit or to reduce wage rates, or total wages paid to any of their employees.*

Petitioners contend that they and their class were injured in their business or property in that the "work" available to petitioners and the purported class was reduced. *Petitioners, however, do not claim to have lost wages.* Petitioners claim for themselves and for their class damages in an amount not less than Eighty Million Dollars ($80,000,000), or Two Hundred Forty Million Dollars ($240,000,000), trebled. (R. 5, lines 9-17.)

Respondents duly moved to dismiss the complaint, or alternatively for summary judgment pursuant to Rule 56 F. R. C. P., on the ground that petitioners did not have

standing to prosecute the purported claim for damages. (R. 36-99 and 109-216.) In response to such motions, and after reading and considering the extensive memorandum of points and authorities and affidavits on file and after hearing the argument of counsel, the District Court granted respondents' motion to dismiss. The court did so on the ground that petitioners lacked the requisite standing to prosecute an action for damages. (R. 232-264) Petitioners appealed to the Court of Appeals for the Ninth Circuit. After the matter was thoroughly briefed on behalf of all of the parties, and after oral argument, the Court of Appeals rendered its decision on September 7, 1973, affirming the order and judgment of the trial court.

Following the Court of Appeals decision, petitioners did not petition for a rehearing pursuant to Rule 40 Federal Rules of Appellate Procedure. Nor did petitioners petition for a rehearing by the Ninth Circuit *en banc* pursuant to Rule 35 F. R. A. P.

The decision of the District Court and of the Court of Appeals for the Ninth Circuit is clear, sound and judicious, is in accordance with prior decisions of this Court, is in accordance with long standing and proper decisions of the Court of Appeals for the Ninth Circuit, and is consistent with decisions of other circuits in analogous cases. We respectfully submit that the petition for writ of certiorari should not be granted.

WHY THE PETITION FOR CERTIORARI SHOULD NOT BE GRANTED

1. The Petition Does Not Present any Issue Which Should Be Decided by This Court.

The petition does not present any issue which requires or justifies a determination by this Court at this time. The District Court and the Ninth Circuit below each concluded that under Section 4 of the Clayton Act petitioners could

not have suffered any damage "by reason of" any violation of the antitrust laws. Each court rested its conclusion upon the ground that petitioners could not have been within the "target area", as that test has been articulated by—among other circuits—the Ninth Circuit, of an alleged conspiracy to fix prices. Petitioners made no effort whatsoever to seek a rehearing either by the panel of the Ninth Circuit which rendered the decision by the Ninth Circuit *en banc* pursuant to Rules 35 and 40, Federal Rules of Appellate Procedure. Petitioners thereby have admitted that the decision of the Ninth Circuit in their case complies and is in accordance with prior applicable decisions by the Ninth Circuit.

The question presented in essence therefore is whether the courts below failed to properly construe and apply the phrase "by reason of", as that phrase appears in § 4 of the Clayton Act, in holding that petitioners did not have standing to sue for damages claimed to have arisen from the alleged price fixing conspiracy.

In the past, this Court has been confronted with almost countless petitions for certiorari claiming that the courts below have misinterpreted and misapplied this particular phrase of § 4 of the Clayton Act. (*E.g. Miley v. John Hancock Mutual Life Ins. Co.*, 148 F.Supp. 299 (D. Mass.), aff'd *per curiam* 242 F.2d 758 (1st Cir.), *cert. denied*, 355 U.S. 828 (1957); *Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc.*, 454 F.2d 1292 (2d Cir. 1971), *cert. denied*, 406 U.S. 930 (1972); *Billy Baxter, Inc. v. Coca Cola Co.*, 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923 (1971); *Fields Productions, Inc. v. United Artists Corp.*, 432 F.2d 1010 (2d Cir. 1970), aff'g *per curiam*, 318 F.Supp. 87 (S.D.N.Y. 1969), *cert. denied*, 401 U.S. 949 (1971); *Kaufman v. Dreyfus Fund*, 434 F.2d 727 (3d Cir. 1970), *cert. denied*, 401 U.S. 974 (1971); *Melrose Realty Co. v. Lowe's,*

Inc., 234 F.2d 518 (3d Cir. 1956), *cert. denied*, 352 U.S. 890 (1956); *South Carolina Council of Milk Producers, Inc. v. Newton*, 360 F.2d 414 (4th Cir. 1966), *cert. denied*, 385 U.S. 934 (1966); *Volasco Products Co. v. Lloyd A. Fry Roofing Co.*, 308 F.2d 383 (6th Cir. 1962), *cert. denied*, 372 U.S. 907 (1963); *Commonwealth Edison Co. v. Allis-Chalmers Mfg., Co.*, 315 F.2d 564 (7th Cir. 1963), *cert. denied sub nom. Illinois v. Commonwealth Edison Co.*, 375 U.S. 834 (1963); *In Re Multidistrict Vehicle Air Pollution, M. D. L. No. 31*, 481 F.2d 122 (9th Cir.), *cert. denied sub nom. Morgan v. Automobile Manufacturers Ass'n, Inc.*, ... U.S. ..... (Nov. 19, 1973) (Dkt. No. 73-394); *Mulvey v. Samuel Goldwyn Productions*, 433 F.2d 1073 (9th Cir. 1970), *cert. denied*, 402 U.S. 923 (1971); *Conference of Studio Unions v. Loew's, Inc.*, 193 F.2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952).) Most recently, the Court was presented with such a petition involving a decision by the Court of Appeal for the Ninth Circuit. (*In re Multidistrict Vehicle Air Pollution, M. D. L. No. 31*, 481 F.2d 122 (9th Cir.) *cert. denied Morgan v. Automobile Manufacturers Ass'n et al.*, ... U.S. ..... (Nov. 19, 1973) (Dkt. No. 73-394).) The Court has denied these petitions in almost all instances.

There is no issue presented by the petition in the present instance which has not been presented most ably many, many times in the past. In each of these prior instances, the petition has been denied. As was true of these many petitions in the past, the petition in the present instance should not be granted: No question is presented by the petition which requires or justifies disposition by this Court.

2. The Decision of the District Court and the Ninth Circuit Below Is in Complete Accord with Prior Decisions of This Court.

In holding that petitioners lacked the requisite standing to maintain an action for damages under Section 4 of the

Clayton Act, the District Court and the Ninth Circuit below acted in full and complete accord with prior decisions of this Court.

Petitioners, however, relying upon this Court's decision in *Radovich v. National Football League,* 352 U.S. 445 (1957), contend that any person who can show that he has suffered injury caused *in fact* by an antitrust violation may prosecute a claim for damages under Section 4 of the Clayton Act. *Yet, in Radovich, the plaintiff had been specifically blacklisted by the National Football League and was plainly well within the target area of, and indeed aimed at by, the unlawful conspiracy. Radovich,* therefore, offers no support for petitioners' contention. Moreover, in *Hawaii v. Standard Oil Co.,* 405 U.S. 251 (1972), this Court has made it abundantly clear that before a plaintiff may maintain an action for damages under Section 4 of the Clayton Act he must show substantially more than that he suffered direct injury *caused in fact* by an alleged violation of the antitrust laws. Thus at page 262-263, note 14, the Court stated the following:

> "The lower courts have been virtually unanimous in concluding that Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." (Citing *Hoopes v. Union Oil Company,* 374 F.2d 480, 485 (9th Cir. 1967) and numerous other decisions asserting and applying the standing concept of Section 4 of the Clayton Act.)

See also *Perkins v. Standard Oil Co.,* 395 U.S. 642, 649 (1969).

The holding below that petitioners in the present instance lacked the requisite standing to maintain their alleged antitrust action for the reason that they could not have been within the area of the economy which could have been endangered with a competitive breakdown is therefore

consistent and in accordance with prior decisions of this Court.

3. The Decision of the Courts Below in Finding That Petitioners Could Not Have Been Injured "by Reason of" Anything Forbidden by the Antitrust Laws Is in Accord with Prior Decisions of the Court of Appeals for the Ninth Circuit and Are Not Inconsistent with Decisions of Other Circuits.

The decision of the courts below are in complete accord with prior decisions of the Ninth Circuit. (*E.g., In re Multidistrict Vehicle Air Pollution M.D.L. No. 31,* 481 F.2d 122 (9th Cir.), *cert. denied sub nom. Morgan v. Automobile Manufacturers Ass'n, Inc.,* ..... U.S. ..... (November 19, 1973) (Dkt. No. 73-394); *Mulvey v. Samuel Goldwyn Productions,* 433 F.2d 1073 (9th Cir. 1970), *cert. denied,* 402 U.S. 923 (1971); *Hoopes v. Union Oil Company,* 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), *cert. denied,* 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955; *Conference of Studio Unions v. Loew's,* 193 F.2d 51 (9th Cir. 1951), *cert. denied,* 342 U.S. 919 (1952).) *Indeed, as we have previously indicated, petitioners have conceded as much by failing to petition either for a rehearing by the panel of the Ninth Circuit which rendered the decision in the present instance or for a rehearing by the Ninth Circuit en banc.*

The decision of the Ninth Circuit in *Conference of Studio Unions v. Loew's, Inc.,* 193 F.2d 51 (9th Cir. 1951), *cert. denied,* 342 U.S. 919 (1952), is dispositive of petitioners' claim. In that case, plaintiffs, employees of the defendants and members of certain unions in the motion picture industry, together with these unions, brought an action against certain major motion picture production companies ("Majors") and another union whose employees worked in the motion picture production industry. Among other

things, the complaint charged a conspiracy by the defendants to eliminate as competitors certain motion picture production companies ("Independents"). Pursuant to such conspiracy, the defendant employers allegedly discriminated in their hiring practices in favor of members of the defendant union and against the individual plaintiffs and the members of the plaintiff unions. Among other things, the Majors allegedly agreed to curtail production and distribution of motion pictures. *As a result of the alleged conspiracy, plaintiffs claimed, inter alia, that the individual plaintiffs lost wages and other employment opportunities in the motion picture industry.* The trial court granted the motion of the defendants for judgment on the pleadings. On appeal to the Court of Appeals for the Ninth Circuit, held, affirmed. In so holding, the Ninth Circuit stated the following at 548:

> "A conspiracy may have many purposes and objects; a conspiracy may perform an almost infinite variety of acts in furtherance of the conspiracy; but, in order to state a cause of action under the antitrust laws a plaintiff must show that more than one purpose of the conspiracy was a restraint of trade and that an act has been committed which harms him. *He must show that he is within the area of the economy which is endangered by a breakdown of competitive conditions in a particular industry. Otherwise, he is not injured "by reason of" of anything forbidden in the antitrust laws.* (Emphasis Added.)

The decision of the Ninth Circuit in *Conference of Studio Unions v. Lowe's, Inc.* has been reaffirmed in a string of decisions by the Ninth Circuit extending over more than twenty years. (*E.g., In re Multidistrict Vehicle Air Pollution, M.D.L. No. 31,* 481 F.2d 122 (9th Cir.), *cert. denied sub nom. Morgan v. Automobile Manufacturers Assn., Inc., et*

al., ... U.S. .... (Nov. 19, 1973) (Dkt. No. 73-394); *Hawaii v. Standard Oil of Calif.*, 431 F.2d 1282 (9th Cir. 1970), *aff'd*, 405 U.S. 251 (1972); *Mulvey v. Samuel Goldwyn Productions*, 433 F.2d 1073 (9th Cir. 1970), *cert. denied*, 402 U.S. 923 (1971); *Hoopes v. Union Oil Company of California*, 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corporation v. Goldwyn*, 328 F.2d 190, 220 (9th Cir. 1964), *cert. denied*, 379 U.S. 880 (1964); *Karseal Corporation v. Richfield Oil Corporation*, 221 F.2d 358 (9th Cir. 1955).)

In the most recent decision of *In re Multidistrict Vehicle Air Pollution, M. D. L. No. 31, supra*, after quoting with approval from the court's opinion in *Conference of Studio Unions v. Lowe's, supra*, the court stated the following at p. 128:

> "To attain standing, a plaintiff must thus allege that the antitrust violation injured a commercial enterprise of the plaintiff in the area of the economy in which the elimination of competition occurred. Standing is denied on the other hand, if the claimant's commercial activity occurred outside the area of the economy. *Hence, the "target area" approach provides a logical and flexible tool for analyzing whether a particular claimant falls within the class of persons slated by Congress for protection under Section 4 of the Clayton Act.*" (Emphasis added)

In this action, petitioners, on information and belief have alleged that respondents and other alleged co-conspirators entered into a combination and conspiracy in interstate trade and commerce to fix prices for iceberg lettuce at an artificially high and non-competitive price. (R. 3, line 29 thru 4, line 5.) As a part of such conspiracy, respondents are alleged, again on information and belief, to have conspired to limit the total amount of iceberg lettuce produced and sold by them each year. As a result, petitioners claim

to have lost work. *Yet, petitioners do not, even on the tenuous basis of information and belief, claim that any purpose of, or means employed by, the alleged conspiracy was to reduce, fix or limit hours worked, wages paid, production costs, or employees employed.*

As the District Court observed, it was not necessary that hours worked, wages paid or production costs be reduced or limited to achieve the objective of the alleged conspiracy to fix prices. Further, it is not logical to conclude or assume that wages paid would have been reduced by such an alleged conspiracy. Had such a conspiracy been in effect, which we emphatically deny, we submit that the daily "swings" or "ups and downs" normally prevalent in the pricing structure of the fresh produce industry would have been substantially dampened or eliminated. The effect over a period of time could well have been to increase total production, particularly among the smaller producers. As a result, the number of hours and days worked by farm worker employees could have been increased. Moreover, it is obvious that any unplanted land would not have been left fallow but would have been planted to other crops, and petitioners and members of the alleged class would have been engaged in harvesting these replacement crops when not engaged in harvesting lettuce.

Applying the flexible "target area" test espoused by the Ninth Circuit[2], both the District Court and the Ninth Circuit determined that in their considered judgment petitioners could not fall within the area of the economy which could have been endangered by a breakdown of competitive conditions as a result of the alleged price fixing conspiracy and

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2. As analyzed by the Ninth Circuit in *In re Multidistrict Vehicle Air Pollution, M.D.L. No. 31, supra,* the several circuit courts have employed two somewhat different analytical techniques, with varying overtones, in seeking to determine whether a plaintiff, claiming to be entitled to damages as a result of a violation of the

therefore could not have been injured "by reason of" anything forbidden by the antitrust laws. This judgment was thoroughly considered and reviewed by the two lower courts, was fair, just and equitable, was fully consistent with prior decisions of the Ninth Circuit, and does not require or justify further review by this Court.

Moreover, the judgment of the courts below is perfectly consistent with the decisions of courts in other circuits. Indeed, it is directly analogous to the recent decision of the Second Circuit in *Calderone Enterprises Corporation v. United Artists Theatre Circuit, Inc.*, 454 F.2d 1292 (2nd Cir. 1971), *cert. denied*, 406 U.S. 932 (1972). There a landlord of motion picture theatres brought an action against certain motion picture distributors and exhibitors. The defendant exhibitors included certain lessees of the plaintiff landlord. The plaintiff alleged that the defendants had conspired to restrain trade in the distribution and exhibition of certain motion pictures. As a result of such conspiracy with the landlord's lessees, the plaintiff landlord claimed to have suffered damage by way of loss of rentals under a percentage of gross receipts clause in the respective lease agreements. As in the present instance, the trial court granted the motion of the defendants to dismiss the antitrust claims on the ground that the plaintiff did not have standing under Section 4 of the Clayton Act. On appeal to the Second Circuit, held, affirmed. In so holding, the court stated the following at 1295-6:

> "In a series of decisions over the last 15 years, *in all of which certiorari was denied by the Supreme Court*, this court has committed itself to the principle that *in order to have 'standing' to sue for treble damages*

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antitrust laws, has indeed been injured "by reason of" such an alleged violation within the meaning of Section 4 of the Clayton Act. The Ninth Circuit in its opinion describes these two tests as the "target area" and the "direct injury" approaches. (*In re Multidistrict Vehicle Air Pollution, M. D. L. No. 31, supra*, at 127, n. 7.)

under § 4 of the Clayton Act, a person must be within the "target area" of the alleged antitrust conspiracy, i.e., a person against whom the conspiracy was aimed, such as a competitor of the persons sued. Accordingly we have drawn a line excluding those who have suffered economic damage by virtue of their relationships with 'targets' or with participants in an alleged antitrust conspiracy, rather than by being 'targets' themselves. . . .

"The rationale behind the foregoing demarcation is simple, fair and reasonable. It respects the purpose of § 4 of the Clayton Act, which is to provide a private enforcement weapon that will deter violation of the federal antitrust laws by permitting any person injured in his business by reason of an antitrust violation to recover treble the damages actually suffered. It acknowledges that while many remotely situated persons may suffer damage in some degree as the result of an antitrust violation, their damage is usually much more speculative and difficult to prove than that of a competitor who is an immediate victim of the violation. *Furthermore, if the flood-gates were opened to permit treble damage suits by every creditor, stockholder, employee, subcontractor, or supplier of goods and services that might be affected, the lure of a treble recovery, implemented by the availability of the class suit as facilitated by the amendment of Rule 23 F.R.C.P., would result in an over-kill, due to an enlargement of the private weapon to a caliber far exceeding that contemplated by Congress.* . . .

"Accordingly it is necessary to use a rule of reason in construing the requirements of § 4 of the Clayton Act as to standing, just as such a rule has been adopted by courts in determining whether restraints, other than per se violations, transgress §§ 1 and 2 of the Sherman Act. [Citations omitted] A line which limits standing to those against whom the antitrust violation is directed fulfills Congress' fundamental purpose and at the same time establishes a reasonable and easily

identifiable cutoff that avoids the unfortunate consequences of opening the flood-gate to all, no matter how remote their interest or incidental their relationship. Competitors who are within the target area of an alleged antitrust conspiracy usually have more incentive than others to avail themselves of § 4. In those cases where they fail to do so, the Government may, of course, seek injunctive or punitive relief under other sections of the antitrust laws.

"Applying these established principles here, plaintiff, a non-operating landlord of a theatre leased to an exhibitor, is clearly outside of the target area of the alleged conspiracy of distributors and exhibitors, which was to restrain competition in the exhibition of motion pictures. *The alleged conspiracy was admittedly not aimed at plaintiff, but a competing distributors and exhibitors. Nor does the fact that the plaintiff's lessee was allegedly a party to the conspiracy materially distinguish this case from those where standing has been denied to one having a similar relationship to an innocent competitor victimized by a conspiracy, . . . If the plaintiff is not within the 'target area', then it is legally immaterial whether the person through whom the plaintiff derives his injury was a member of the conspiracy or was innocent of any wrongdoing. A plaintiff not a target of any antitrust violation does not become a target by virtue of the culpability of its lessee, patentee, franchisee, supplier, customer, or debtor.*" (Emphasis Added)

(See also, *Snow Crest Beverages, Inc. v. Recipe Foods, Inc.*, 147 F.Supp. 907 (D.Mass. 1956) (Supplier of beverage ingredient lacked standing to sue for acts directed against the bottler to whom the plaintiff sold almost its entire output); *SCM Corporation v. Radio Corporation of America*, 407 F.2d 166 (2d Cir. 1969), *cert. denied*, 395 U.S. 943 (1968), *reh. denied*, 396 U.S. 869 (1969); *Rossi v. McCloskey and Company*, 149 F.Supp. 638, 640 (E.D.Pa. 1957) (Em-

ployees lacked standing to sue their employer who had conspired with others to monopolize business.); *South Carolina Council of Milk Producers, Inc. v. Newton,* 360 F.2d 414, 418, 420 (4th Cir. 1966), *cert. denied,* 385 U.S. 934 (1966); *Centanni v. T. Smith & Son, Inc.,* 216 F.Supp. 330, 338 (E.D.La. 1963) affirmed 323 F.2d 363 (5th Cir. 1963) (Employees lack standing.); *Nationwide Auto Appraiser Service v. Association of C. & S. Co.,* 382 F.2d 925, 927 (10th Cir. 1967) (cited with approval by the Court in *Hawaii v. Standard Oil, supra* at fn. 14). See also cases cited at pp. 5-6, *supra.*)

The decisions relied upon by petitioners are inapposite and not controlling in the present instance. In *Roseland v. Phister Mfg. Co.,* 125 F.2d 417 (7th Cir. 1942), and in *Vines v. General Outdoor Advertising Co.,* 171 F.2d 487 (2nd Cir. 1948), plaintiffs were both commission salesmen who had allegedly been driven out of a former market by having their accounts transferred to competitors pursuant to alleged unlawful territorial allocation conspiracies. Similarly, in *Dailey v. Quality School Plan, Inc.,* 380 F.2d 484 (5th Cir. 1967), the plaintiff was a commissioned salesman who was confronted with reduction in the size of his territory and ultimately termination of his employment as a result of an unlawful merger. In each instance, the salesman, *as an integral part of such unlawful combination and conspiracy and as an agreed means or objective of the conspiracy,* was forceably prevented from engaging in business in a territory which he had developed over many years, and was literally driven out. In each instance the courts of appeal held that the salesman had been injured in his "business or property" and that he was entitled to recover damages arising in fact from the alleged unlawful acts. Plainly, each plaintiff not only fell within the target area; each plaintiff was the target itself and directly aimed

at by the unlawful combination and conspiracy. Such decisions are not, as petitioners contend, at variance with the judgment of the courts below in the present instance.

Finally, the decision of the District Court in *Wilson v. Ringsby Truck Lines, Inc.*, 320 F.Supp. 699 (D.Colo. 1970), relied upon by petitioners, is contrary to the decision of the 10th Circuit in *Nationwide Auto Appraiser Service, supra,* with which the District Court openly expressed disapproval and was expressly disapproved by the Tenth Circuit in *Reibert v. Atlantic Richfield Co.*, 471 F.2d 727 at 733 (10th Cir.), *cert. denied,* 411 U.S. 938, *rehg. denied,* 412 U.S. 914 and 945 (1973).

CONCLUSION

This matter has been thoroughly briefed and argued before two lower courts. It has been carefully weighed and considered by these two courts. Each of these courts concluded that petitioners could not have been within the "target area," the area of the economy endangered with a competitive breakdown as a result of the alleged price fixing conspiracy; they therefore could not have been damaged "by reason of" such conspiracy within the meaning of Section 4 of the Clayton Act. Such conclusion is fully consistent with prior decisions and policy statements of this Court. It is in complete accord with a chain of decisions developed by the Court of Appeals for the Ninth Circuit over a number of years and which have been previously submitted to this Court for review. And it is consistent with decisions reached by other circuits in analogous instances. For the reasons therefor set forth herein,

we respectfully urge that the writ of certiorari prayed for should not issue.

Respectfully submitted,

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SUPREME COURT, U. S.

JAN 19 1974

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-876

JESUS CONTRERAS, et al., *Petitioners,*

vs.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, et al., *Respondents.*

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, et al., *Respondents.*

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Respondents respectfully pray that the Petition for Writ of Certiorari requested by Petitioners to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the above entitled proceeding on September 7, 1973, be denied.

OPINIONS BELOW

Respondents adopt for purposes of this brief the material in Petitioner's Petition under the heading "Opinions Below."

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether a group of farm workers has standing to bring a class action on behalf of all such workers for treble damages under Section 4 of the Clayton Act (15 U.S.C. § 15) against their employers for work purportedly lost when the employers allegedly engaged in a conspiracy to raise prices by limiting production.

STATUTES INVOLVED

The relevant statutes involved are adequately set forth in the Petition.

STATEMENT OF THE CASE

This is an antitrust action brought under the Sherman Antitrust Act (15 U.S.C. § 1, § 2) and the Clayton Act (15 U.S.C. § 15) (CR 2:17-20; 262:26-28).[1] The Complaint, filed on September 3, 1970, alleges that respondents—growers and shippers of iceberg lettuce (CR 2:25-30), and their "trade association"—entered into a contract, combination, and conspiracy to restrain interstate trade in iceberg lettuce and thereby raise and fix the price of the lettuce at an artificially high and noncompetitive price (CR 4:2-5). Petitioners allege that the overt actions in furtherance of

1. "CR references are to the Record of Appeal which is on file in the Court of Appeal below.

the antitrust violations consist of limiting the total amount of iceberg lettuce produced and sold each year (CR 4:14-16).

Petitioners allege they have been "injured in their business or property" by acts of the respondents in that they have lost employment opportunities due to reduced production and harvesting of the lettuce, which petitioners claim reduced the hours per day and days per year worked by agricultural employees (CR 4:20-26); petitioners' alleged *conspiracy,* however, does not accuse respondents of doing any of the above acts.

Petitioners bring this action on their own behalf and as representatives of all farm workers who are now or have, since September 15, 1966, been employed by respondents in growing, harvesting, and/or processing iceberg lettuce (CR 3:11-15).

Respondents herein filed a Motion for Summary Judgment (CR 36, 37), which the Court and the parties have treated as a Motion to Dismiss the Complaint for failure to state a claim upon which relief can be granted on the ground that petitioners lack the requisite standing to sue. (CR 263:11-14).

After a hearing before the District Court, and the filing and consideration of briefs of all parties, U. S. District Judge Alphonso J. Zirpoli granted the respondents' Motion to Dismiss the Complaint (CR 263-264), and Judgment dismissing the petitioners' action was filed May 21, 1971 (CR 275, Item 39).

Petitioners appealed to the Court of Appeals for the 9th Circuit by Notice of Appeal filed April 20, 1971. The Court of Appeals in a per curiam decision dated September 7, 1973, unanimously affirmed the judgment below. From that decision petitioners seek review in this Court by a Petition for Writ of Certiorari.

ARGUMENT

A. There Is No Conflict Among Court Decisions in Applying the "Standing Doctrine" of Section 4 of the Clayton Act (15 U.S.C. § 15).

1. THE "STANDING DOCTRINE" IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The 9th Circuit's long established "standing doctrine"[2] as applied to Section 4 of the Clayton Act (15 U.S.C. § 15), has been recognized by this Court in *Perkins v. Standard Oil Co.*, 395 U.S. 642 (1969), reversing 396 F.2d 809 (9th Cir. 1968) and more recently in *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972).

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2. The standing doctrine has been defined as follows:

"'Standing' under Section 4 actually encapsulizes two distinct ingredients. First, a plaintiff must demonstrate that the interests allegedly injured by the defendant fall within the scope of antitrust protection. This requirement, which arises from judicial constructions of 'business or property' and 'by reason of', is satisfied in the manner set forth in our opinion. A second and distinct ingredient demands that a plaintiff show that the defendant's conduct contributed to his injury. This cause-in-fact requirement also derives from 'by reason of'. Once these two standing issues are resolved in favor of a plaintiff, the court can proceed to determine if the defendant's conduct violated the antitrust laws and, then, to ascertain the consequent damages."

In re Multidistrict Vehicle Air Pollution, M.D.L., No. 31, 481 F.2d 122 at 129 n. 11 (9th Cir. 1973), *cert. denied, sub nom. Morgan v. Automobile Manufacturers Assn., Inc.*, ... U.S. ..... (Nov. 19, 1973, No. 73-394, 38 L Ed 2d 336)

Furthermore, the 9th Circuit has traditionally defined the "by reason of" part of the standing doctrine, also labeled "target area", as requiring the injured party to ". . . show that he is within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry. Otherwise he is not injured 'by reason' of anything forbidden in the antitrust laws."

Conference of Studio Unions v. Loew's, Inc., 193 F.2d 51 at 54-55 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952). *See* also *Hoopes v. Union Oil Company*, 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn*, 328 F.2d 190 at 220 (9th Cir. 1964), *cert. denied*, 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.*, 221 F.2d 358 at 362 (9th Cir. 1955).

In *Perkins* the major concern was whether "fourth level" price discrimination is illegal under Section 2 of the Clayton Act as amended by Section 13 of the Robinson-Patman Act (15 U.S.C. § 13). The plaintiff had an additional claim under Section 4 for alleged injuries from failure to receive brokerage fees for securing gasoline, rental on leases of service stations, and payment of other indebtedness. This Court's reversal of the Section 4 issue was based in part upon the recognition that the panel of the 9th Circuit that decided the lower *Perkins* case (*Standard Oil Co. v. Perkins,* 396 F.2d 809 (9th Cir. 1968) misapplied *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1967). As the Court said,

> ". . . For this proposition the Court of Appeals cited *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358, 363, which held that 'the rule is that one who is only *incidentally* injured by the violation of the antitrust laws,—the bystander who was hit but not aimed at,—cannot recover against the violator.' It is clear in this case, however, that Perkins was no mere innocent bystander; he was the principal victim of the price discrimination practiced by Standard." *Perkins,* supra, at 649.

By employing this language it is clear that this Court recognized the 9th Circuit's "standing doctrine" as developed by the Circuit Court in *Karseal,* supra.

In 1972, this Court gave further recognition and acceptance to the rationale of the "standing doctrine" cases in *Hawaii,* supra. A major issue in that case was whether or not the State of Hawaii had standing to sue under provisions of Section 4 for injuries to its general economy by reason of violations of antitrust laws. This Court held:

> "Like the lower courts which have considered the meaning of the words 'business or property,' we conclude that they refer to commercial interests or enter-

> prises. [citations omitted] When the State seeks damages for injuries to its commercial interest, it may sue under Section 4. But, where as here, the State seeks damages for other injuries, it is not properly within the Clayton Act." *Hawaii*, supra, at 264.

This Court recognized that the lower courts developed a "standing doctrine" limiting those eligible to bring antitrust suits under Section 4.

> "The lower courts have been virtually unanimous in concluding that Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." [citations including *Hoopes v. Union Oil Company*, 374 F.2d 480, 485 (9th Cir. 1967)] *Hawaii*, supra, at 262-263 Note 14

Petitioners' reliance on *Radovich v. National Football League*, 352 U.S. 445 (1957) is misplaced. There can be no clearer case than *Radovich* of a target which has been directly aimed at and used as the means of accomplishing an illegal combination. Radovich, one of several football players "blacklisted" for jumping football leagues, was specifically listed as *the target* and the result of the allegedly illegal acts directly injured him in a commercial skill, quality or interest which he had acquired by reason of his unique ability and saleable qualities as a football player.

2. THERE IS NO CONFLICT AMONG THE VARIOUS CIRCUITS.

Petitioners argue that there exists direct conflict among the various circuits concerning the application of the "standing doctrine". In truth, such conflict does not exist. At most there has been a difference in "labels" or "analytical techniques" at arriving at similar results. In June of 1973 in *In re Multidistrict Vehicle Air Pollution, M.D.L.*,

No. 31, 481 F.2d 122 (9th Cir. 1973), *cert. denied, sub nom. Morgan v. Automobile Manufacturers Assn., Inc.*, ... U.S. ..... (November 19, 1973, No. 73-394; 38 L. Ed. 2d 336), the 9th Circuit wrote an in-depth opinion analyzing the standing doctrine as it is applied to Section 4 of the Clayton Act by the various circuits and clearly showed that no conflict exists.[3]

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3. These distinctions were discussed *In Re Multidistrict Vehicle Air Pollution, M.D.L. 31*, supra,

"[6]We have employed the terms "target area" and "direct injury" only as convenient, shorthand methods of identifying the two major approaches to the interpretation of "by reason of". Use of either label in other cases, in contrast, has frequently suggested an approach opposite that so denominated here. *E.g.*, Perkins v. Standard Oil Co., 396 F.2d 809 (9th Cir. 1968) (court labeled approach "target area" but employed the "direct injury" analysis), *rev'd*, 395 U.S. 642 (1969). Likewise, some courts have failed to perceive significant distinctions between the tests. *E.g.*, Nationwide Auto Appraiser Serv., Inc. v. Ass'n of Cas. & Sur. Cos., 382 F.2d 925 (10th Cir. 1967). *It is to be hoped that the resolution suggested in our present opinion will obviate the use of either label in the future.* [Emphasis added]

"[7]We do not mean to imply that each circuit falls neatly into one of the two pigeonholes. Only the Eighth Circuit and ours, for example, have consistently followed the "target area" approach, *e.g.*, Mulvey v. Samuel Goldwyn Productions, 433 F.2d 1073 (9th Cir. 1970); Sanitary Milk Producers v. Bergjans Farm Dairy, Inc., 368 F.2d 679, 688-89 (8th Cir. 1966) (Blackmun, J.), and even they have diverged occasionally. *E.g.*, Perkins v. Standard Oil Co., *supra* note 6. The First, Third, Sixth and Tenth Circuits, on the other hand, generally apply the test we label "direct injury". *E.g.*, Reibert v. Atlantic Richfield Co., 471 F.2d 727 (10th Cir. 1973); Kauffman v. Dreyfus Fund, 434 F.2d 727, 732-34 (3d Cir. 1970), *cert. denied*, 401 U.S. 974 (1971); Volasco Products Co. v. Lloyd A. Fry Roofing Co., 308 F.2d 383, 394-95 (6th Cir. 1962); Miley v. John Hancock Mut. Life Ins. Co., 148 F.Supp. 299 (D. Mass.), *aff'd per curiam*, 242 F.2d 758 (1st Cir.), *cert. denied*, 355 U.S. 828 (1957). The Second, Fourth and Fifth Circuits have formulated their own particular mixtures of the two tests, *e.g.*, Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc., 454 F.2d 1292 (2d Cir. 1971); Dailey v. Quality School Plan, Inc., 380 F.2d 484 (5th Cir. 1967); South Carolina Council

Petitioners have continually tried to apply the "salesman" cases[4] as authority to support their position that they should have standing under Section 4 and that these cases are in direct conflict with the 9th Circuit's holding in this case. In each of the "salesman" cases the alleged antitrust violation was directly "aimed at" the particular plaintiff's commercial assets and the Courts recognized that if a particular commercial ability achieved by individual plaintiffs is within the area of the economy affected by antitrust violations, then that "business or property" should be protected by the antitrust laws.

The fire equipment salesman in *Roseland v. Phister Mfg. Co.*, 125 F.2d 417 (7th Cir. 1942) allegedly lost his sales area, and, thereby, his commercial investments in the sales area which he had developed. The advertising salesman in *Vines v. General Outdoor Advertising Co.*, 171 F.2d 487 (2d Cir. 1948) allegedly lost accounts which he had developed when they were transferred to a competitor. The commission book salesman in *Dailey v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir. 1967) alleged that he had lost customers by reduction of his sales territory and that he was later

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of Milk Producers, Inc. v. Newton, 360 F.2d 414 (4th Cir. 1966), although the approach of the Second more closely resembles the "direct injury" test and that of the Fourth and Fifth, the test of "target area". The Seventh Circuit's approach is uncertain, although it appears closer to "target area". *Compare* Sandidge v. Rogers, 256 F.2d 269 (7th Cir. 1958) *with* Congress Building Corp. v. Loews, Inc., 246 F.2d 587 (7th Cir. 1957). In ascribing positions to the various Circuits, we have ignored self-descriptions and have attempted to analyze their actual approaches."

In Re Multidistrict Vehicle Air Pollution, M.D.L. 31, Footnotes 6 and 7. *See* also text discussion at pages 124-128.

4. *Roseland v. Phister Mfg. Co.*, 125 F.2d 417 (7th Cir. 1942); *Vines v. General Outdoor Advertising Co.*, 171 F.2d 487 (2d Cir. 1948); and *Dailey v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir. 1967);

terminated by reason of his employer's acquisition of a competitor in violation of the antitrust laws. All of these cases represent instances in which the injured plaintiff possessed a unique commercial asset in the area of the economy endangered by a breakdown of competitive conditions and is consistent with the standing doctrine.

Petitioners cite *Wilson v. Ringsby Truck Lines, Inc.*, 320 F. Supp. 699 (D.C. Colo., 1970), a 10th Circuit District Court case. *Wilson* has been specifically disapproved by the 10th Circuit Court. *Reibert v. Atlantic Richfield Co.*, 471 F.2d 727 at 733 (10th Cir. 1973), *cert. denied* ..... U.S. ..... (April 16, 1973, 93 S.Ct. 1900) *rehearing denied.*

B. The Decision of the Court of Appeals in the Instant Case Is Consistent to the National Antitrust Policies as Articulated by This Court.

The decision in *Hawaii v. Standard Oil Co.*, supra, discussed above, recognized that the provisions of Section 4 and the opportunity for recovery of treble damages should be limited to parties who have been injured in their commercial interest or enterprises, and should not be extended to all injuries that might be conceivably traced to an alleged antitrust violation. *Hawaii*, supra, at 262-263 Note 14 and at 264.

The logic discussed above from *Hawaii*, supra, was the basis for the decision that the State of Hawaii did not have standing to sue for injuries to its general economy, and should serve as authority that Section 4 does not apply to all injuries caused by an alleged antitrust violation and supports the rationale of the "standing doctrine" as applied in petitioners' case.

The purpose of the conspiracy alleged by petitioners in this case was admittedly to raise prices by reducing production, not to restrict working hours of farm workers.

As a result, the District Court and the 9th Circuit Panel both held that petitioners' alleged injuries are not protected by the provisions of Section 4.

CONCLUSION

Within the last ten years this Court has repeatedly refused to grant certiorari on the "standing doctrine" cases from this circuit, *e.g., Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1969), *cert. denied,* 379 U.S. 880 (1964); and *In re Multidistrict Vehicle Air Pollution, M.D.L. No. 31,* supra; and from other circuits, *e.g., Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc.,* 454 F.2d 1292 (2d Cir. 1971), *cert. denied,* 406 U.S. 930 (1972); *Volasco Products Co. v. Lloyd A. Fry Roofing Co.,* 308 F.2d 383 (6th Cir. 1962), *cert. denied,* 372 U.S. 907 (1963); and *Reibert v. Atlantic Richfield Co.,* supra. This repeated denial of certiorari would appear to indicate that this Court does not feel that a conflict on the standing doctrine exists among the various Courts meriting review.

The Writ of Certiorari requested by petitioners should be refused because 1) this case is consistent with the standing doctrine recognized by this Court; 2) there is no conflict among the circuits in applying the doctrine; and 3) that doctrine is not contrary to national policy.

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